

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



FILED

01/17/23

04:59 PM

A2301017

Velocity Communications, Inc. (U-1653)
Application for Rehearing of Resolution
T-17766

Application _____

**VELOCITY COMMUNICATIONS, INC. (U-1653)
APPLICATION FOR REHEARING OF RESOLUTION T-17766
ADOPTING THE ENVIRONMENTAL ASSESSMENT AND
INITIAL STUDY MITIGATED NEGATIVE DECLARATION AND
APPROVING THE ISSUANCE OF A NOTICE TO PROCEED
FOR THE DIGITAL 299 BROADBAND PROJECT**

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January 17, 2023

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Pursuant to Rule 16.1 of the Commission’s Rules of Practice and Procedure, Velocity Communications, Inc. (“Velocity”) hereby files this Application for Rehearing of Resolution T-17766 approving Vero Fiber Holdings’ (“Vero”) Digital 299 Broadband Project Environmental Assessment (“EA”) and Initial Study Mitigated Negative Declaration (“ISMND”), and approving the issuance of a notice to proceed (NTP for the Digital 299 Broadband Project (Digital 299)).¹ Velocity seeks rehearing on the basis that Resolution T-17766 is based on multiple legal and factual errors.

Under the Commission’s rules, Vero should have filed a formal application to expand its Certificate of Convenience and Necessity (“CPCN”) authority to undertake a project that is not exempt from CEQA. By failing to do so, the Commission violated the due process rights of interested parties by depriving them of any meaningful opportunity to participate in the evaluation of Vero’s project at the Commission. Rather, interested parties such as Velocity were limited only to filing comments on the draft EA/ISMND after it was fully prepared. Additionally, Resolution T-17766 violates CEQA because it relies on an existing, outdated Environmental Assessment (“EA”) that fails to analyze substantial changes in the environment in the project area from catastrophic wildfires and other causes. CEQA precludes the use of an existing EIR under this circumstance. Notably, the State of California Department of Transportation raised concerns about the Digital 299 Project due to “geological issues and new concerns with access control locations.”² NOAA raised concerns about sedimentation.³ The existence of known geological issues, coupled with changes in the soil of the project area due to

¹ Velocity intends to file a Motion for Stay of Resolution T-17766 as soon as a Docket Number is assigned for this Application.

² State of California Department of Transportation Encroachment Permit Report (Diary), p. 1. A true and correct copy of the Permit Report is provided as Exhibit 2.

³ Exhibit 3 is a true and correct copy of NOAA’s comments on the Digital 299 project. See EA/ISMND, Exhibit O.

significant wildfire events in 2020 and 2021, necessitate a new environmental impact report,⁴ thus the Commission should have required Vero to prepare updated environmental reports and a formal application. Finally, Resolution T-17766 violates CEQA because it failed to consider project alternatives and enables Vero to piecemeal the Digital 299 project.

In addition to the above legal errors, the EA and the ISMND adopted by Resolution T-17766 contain factual errors. Specifically, Resolution T-17766 justifies the project in large part on the erroneous conclusion that there is no existing broadband or access to Internet services in the project area. The Commission's broadband map shows that the vast majority of the populated areas in the Digital 299 project are served with broadband. Vero, however, acknowledges that broadband service exists in the area because it characterizes the Digital 299 service area as “underserved” not unserved.⁵ Given that the last public hearings in local jurisdictions were held in 2019, it is likely that even more areas are served and at higher speeds than asserted. Velocity introduced record evidence that broadband is provided by itself and AT&T in a large portion of the Digital 299 service area to residents and anchor institutions.⁶ Therefore, the environmental harms that Vero's EA/ISMND identifies are not in fact necessary to provide broadband.

Any person may challenge, in an administrative or judicial proceeding, the legality of a condition of project approval imposed by the lead agency.⁷ Therefore, Velocity has standing to

⁴ Cal. Pub. Res. Code § 21166 (Deering); see also, Cal. Code Regs. tit. 14, § 15162. Subsequent EIRs and Negative Declarations, from the Guidelines for Implementing CEQA.

⁵ Vero acknowledges that Velocity and other local carriers already provide broadband service to the project areas, “The proposed Project involves installation of a fiber optic cable to serve underserved areas and key “anchor” institutions. The Project responds to current need for underserved residents as well as planned growth under city and county plans. The Project addresses a gap in service and is not anticipated to induce substantial unplanned growth in any of the areas it would serve. Impacts are considered less than significant.” Initial Study, at p. 49. Velocity notes the exclusive use of “underserved” not “unserved” and “gap” in service to imply that there already is existing service.

⁶ Comments of Velocity Communications, Inc. Identifying Deficiencies in Digital 299 Project Environmental Assessment, at p. 2, Feb. 2, 2022.

⁷ Cal. Pub. Res. Code § 21080 (g).

and hereby respectfully challenges the legality of the Commission's approval of the Digital 299 Project. For all of the reasons above, Velocity requests the Commission to grant rehearing, require Vero to update its environmental studies to reflect the current situation in the project area, conduct a study of subsequent construction of cell towers and replacement of utility poles, and file a formal application seeking CEQA review for the Digital 299 project.

I. LEGAL STANDARDS

The purpose of an application for rehearing is to alert the Commission to legal or factual errors in a decision and to allow the Commission to correct the errors expeditiously.⁸ The Commission is bound by certain general principles in issuing decisions. It is required to make decisions based on the record in the proceeding.⁹ The Commission must not act in an arbitrary and capricious manner, and it must proceed in a manner required by law, including the California Constitution.¹⁰ More specifically, the Commission must apply its rules and laws to all parties in a non-discriminatory manner.¹¹

Rule 2.4 of the Commission's Rules of Practice and Procedure¹² requires the submission of an application to obtain authority to construct utility projects to comply with the California Environmental Quality Act of 1970 ("CEQA")¹³ and the guidelines for implementation of CEQA.¹⁴ The CEQA statute requires, among other things, that agency discretionary approval of projects be reviewed to determine the level of environmental harm and to implement mitigation measures to reduce such harm to a less than substantial level.¹⁵ CEQA also includes specific

⁸ Rule 16.1(c) of the Commission's Rules of Practice and Procedure.

⁹ Commission Rule of Practice and Procedure 8.3(k).

¹⁰ Cal. Pub. Util. Code Section 1757.1(a).

¹¹ Cal Const, Art. I § 7.

¹² Cal. Code Regs. Tit. 20, § 2.4(a).

¹³ Cal. Pub. Resources Code § 21000 *et seq.*

¹⁴ Cal. Code of Regulations, Title 14, Sections 15000 *et seq.*

¹⁵ Cal. Pub. Resources Code § 21081.

procedural safeguards to ensure a complete review of projects. Among those safeguards are limitations on the use of an existing EIR and a prohibition on piecemealing a project by the proponent to avoid environmental review. As discussed below, Resolution T-17766 violates both of these CEQA procedural requirements.

Thus, the Commission should grant rehearing, require Vero to file a formal application for the Digital 299 Project that covers existing and future planned construction and allow for meaningful public participation in review of the project.

II. BACKGROUND

On March 24, 2017, the Commission awarded Inyo Networks \$46,709,036 in a grant from the California Advanced Services Fund (“CASF”) T-17548. The grant was for the construction of predominantly middle-mile facilities along the California State Route 299 corridor (“Digital 299 Broadband Project”), covering 2,400 square miles of Shasta, Trinity and Humboldt counties. The CASF award was conditioned on Inyo complying with CEQA by submitting an EA “unless the project is statutorily or categorically exempt pursuant to the CEQA Guidelines.”¹⁶ Inyo undertook environmental review thereafter, but by September of 2020, apparently concluded it could not continue with the project. Inyo sent a letter to Communications Division on September 17, 2020, surrendering the CASF award and withdrawing from the project.¹⁷

Subsequently, another carrier, Vero Fiber Networks, LLC (“Vero”) apparently began discussing the possibility of assuming the Digital 299 project in the summer of 2021. Vero submitted a private letter to the Communications Division on September 7, 2021 confirming its interest in assuming the project and included a term sheet setting forth the understandings it had

¹⁶ Resolution T-17548, at p. 14.

¹⁷ Exhibit 1 is a true and correct copy of Inyo’s letter.

apparently reach with Commission staff.¹⁸ The letter indicated that “our staffs agreed it made sense to proceed under the CASF procedural mechanism already commenced.”¹⁹ Vero stated that it would no longer seek CASF money for the project but requested that it be allowed to continue using the informal staff process for CEQA review, which would result in the issuance of a resolution.²⁰

III. LEGAL AND FACTUAL ERRORS IN RESOLUTION T-17766

Resolution T-17766 approves Vero’s request to take over the Digital 299 Project using Inyo’s CEQA application on the basis that “Vero sent a letter to the Communications Division Director stating that Vero will not seek CASF infrastructure funding; will continue the environmental permitting requirements that were begun for the previous Inyo CASF project; and will commit to provide public benefits, specified in a Term Sheet, consistent with the public benefits the Commission identified in Resolution T-17548.”²¹ However this is procedurally improper and thus legal error.

As a new proponent of the project (particularly after the project lay abandoned for a year) Vero should have filed a formal application. Instead, Resolution T-17766 allows Vero to “step into the shoes” of Inyo and its advice letter CEQA review process. As discussed below, Section Cal. Pub. Res. Code 21166, subsection (b) requires, “Any application for authority to undertake a project that is not statutorily or categorically exempt from CEQA requirements shall include a Proponent's Environmental Assessment (PEA).”²² Vero did not do so. Instead it re-used the PEA

¹⁸ Resolution T-17766, at p. 8 (Appendix B).

¹⁹ *Id.*, at p. 1.

²⁰ *Id.*, at p. 8 (Appendix B).

²¹ Resolution T-17766, at p. 1.

²² Cal. Code Regs. tit. 20, § 2.4(b).

prepared by Inyo, which is out of date and fails to reflect the actual circumstances in the project area.

Resolution T-17766 commits further legal error because it fails to analyze alternatives to the proposed project and enables Vero to engage in piecemealing by failing to conduct any environmental review on identified subsequent construction for the Digital 299 project not covered by the existing EA/ISMND.

Resolution T-17766 further errs legally because it adopts the EA/ISMND despite its failure to address concerns raised by Velocity, the Department of Transportation and NOAA about the geology of the region and fragile soil in the project area.²³ Despite the Commission's assertions, these concerns were not addressed in the November 10, 2022 draft resolution, as it claims.²⁴

Finally, Resolution T-17766 errs legally by failing to address that the State of California Department of Transportation permit was cancelled as of November 4, 2021.²⁵ This new information which could not have been known at the time of the issuance of the permit and geological concerns trigger Section 21166 (b) and (c) and Section 15162 (b) and (c). Thus, requiring a new EIR.²⁶

Resolution T-17766 also errs factually because it approves Vero's Digital 299 project on the basis that the area is lacking high speed infrastructure and that Vero will not need CASF

²³ Resolution T-17766, EA/ISMND at Exhibit O (Comments of NOAA and Velocity); Exhibit 2; Comments of Velocity Communications, Inc. Identifying Deficiencies in Digital 299 Project Environmental Assessment, at p. 2-3, Feb. 2, 2022.

²⁴ See Resolution T-17766, pp.4-5.

²⁵ State of California Department of Transportation Encroachment Permit Report (Diary), at p. 1. A true and correct copy of the Department of Transportation permit cancellation is attached as Exhibit 2.

²⁶ Cal. Pub. Res. Code § 21166 (Deering); see also, Cal. Code Regs. tit. 14, § 15162. Subsequent EIRs and Negative Declarations, from the Guidelines for Implementing CEQA.

funds to complete its project.²⁷ Much of the Digital 299 project area is already served at broadband speeds according to the Commissions broadband map.

A. The Commission Should Have Required Vero to File a Formal Application

Rule 2.4(b) requires a formal application for any project that is not statutorily or categorically exempt from CEQA requirements and shall include a Proponent's Environmental Assessment (PEA). The PEA shall include all information and studies required under the Commission's Information and Criteria List adopted pursuant to Chapter 1200 of the Statutes of 1977 (Government Code Sections 65940 through 65942), which is published on the Commission's Internet website”²⁸ The Digital 299 Project is not categorically exempt and therefore a formal application should have been filed pursuant to Rule 2.4(b) after the project was abandoned by its original proponent then picked up a year later by Vero, which chose to discontinue the CASF portion of the project.

Inyo was the initial proponent that applied for and began the Digital 299 Project in April 2015 and pursued it until September of 2020. The Digital 299 Project lay abandoned for a year during 2020 after Inyo encountered financial difficulties, surrendered the CASF grant awarded in Resolution T-17548, and terminated the project. Then Vero announced it would assume the project, four years after the project was approved by the Commission and two to three years after the environmental studies were done.

Unequivocally, any carrier that wishes to pursue a project that requires CEQA review, must submit an application. CEQA itself²⁹, the Guidelines for Implementation of CEQA³⁰, and

²⁷ Resolution T-17766, at p. 1.

²⁸ Cal. Code Regs. tit. 20, § 2.4(b).

²⁹ Cal. Pub. Resources Code § 21000 *et seq.*

³⁰ Cal. Code of Regulations, Title 14, Sections 15000 *et seq.*

the Commission's Rules of Practice and Procedure³¹, all require a new application for any project that does not fall under an exemption from CEQA review. Simply because this is technically the same project does not mean that Vero may properly assume the project without filing an application, the Commission allowing a meaningful chance for participation by interested parties, and updating environmental reports to reflect changed circumstances, including catastrophic wildfires that altered the soils and other environmental aspects of the project area. These changes were documented by the Department of Transportation, which terminated a permit for the Digital 299 project based on concerns about soils in the project area.³²

B. Digital 299 Exceeds Vero's CEQA Authorization and the Commission Should Have Required Vero to File a Formal Application to Expand its Authority

Vero's authorization to engage in construction is set forth in its CPCN issued in D.19-06-024. This authorization was limited to projects that fall within a categorical exemption under the CEQA statute. The Decision held that "Vero Fiber's proposed activities, as described above, involve construction of reasonably short utility extensions (Class 3), and minor trenching and backfilling (Class 4), in previously disturbed areas (Class 32)."³³ For such projects, Vero was authorized to use the Commission's streamlined 21-day review process.³⁴

The Digital 299 is not categorically exempt from CEQA, as evidenced by the proponent filing an EA and issuance of a MND. The project is 300 miles long and involves placement of underground conduit and possibly placement of new poles that crosses federally-managed public land, state-owned or controlled property, privately owned property, and tribal lands, as well as

³¹ Cal. Code Regs. Tit. 20, § 2.4(a).

³² State of California Department of Transportation Encroachment Permit Report (Diary), p. 1.

³³ D.19-06-024, at p. 6 (issued July 3, 2019).

³⁴ *Id.*

along public rights of way.³⁵ Construction of the facilities would disturb up to a 25-foot-wide corridor to place underground vaults every 2,500 feet.³⁶ The Project also includes the construction of up to five prefabricated buildings to support signal regeneration, distribution, and interconnection (also referred to as "in-line amplifier" or "ILA" buildings).³⁷ These buildings would be installed during the first phase of the Project and are all expected to be sited on private land.³⁸

Vero requested in a private letter sent to the Communications Division director, that it be allowed to assume the Digital 299 project. In the letter, Vero conceded that "the standard process for project approval would require Vero to file a formal application for [sic] petition for modification of Vero's current CPCN."³⁹ Nonetheless, the Communications Division staff apparently allowed Vero to proceed without filing a formal application.

Resolution T-17766 approves Vero's assumption of the project based primarily on the fact that Vero stated it would forego the CASF award associated with the project and awarded to the prior project proponent, Inyo. Because Digital 299 is no longer a CASF project, it was no longer entitled to proceed through the resolution process. The Resolution disregards this procedural error and instead approves the EA/ISMND primarily because Vero promised to provide public benefits, consistent with the public benefits the Commission identified in Resolution T-17548.⁴⁰ The Commission reasoned, "Because environmental review of the

³⁵ Resolution T-17766, at Appendix C (DRAFT MITIGATION MONITORING, COMPLIANCE, AND REPORTING PROGRAM) p. 1; EA/ISMND, Exhibit O.

³⁶ Resolution T-17766, at Appendix C (DRAFT MITIGATION MONITORING, COMPLIANCE, AND REPORTING PROGRAM) p. 1; EA/ISMND, Exhibit O.

³⁷ Resolution T-17766, at Appendix C (DRAFT MITIGATION MONITORING, COMPLIANCE, AND REPORTING PROGRAM) p. 1; EA/ISMND, Exhibit O.

³⁸ Resolution T-17766, at Appendix C (DRAFT MITIGATION MONITORING, COMPLIANCE, AND REPORTING PROGRAM) p. 2; EA/ISMND, Exhibit O.

³⁹ Id., at p. 9 (Appendix B Term Sheet).

⁴⁰ Resolution T-17766, at p. 1.

previous Inyo CASF project was well underway, and because Vero committed to delivering many of the public benefits identified in Resolution T-17548, the Commission determined that Digital 299 should continue to follow the same approval process as the previous Inyo CASF project — culminating in this Resolution.”⁴¹

Allowing Vero to assume Inyo’s Digital 299 project via staff resolution, however, is legal error. Vero’s CPCN authorized it to operate as a full-facilities based carrier and allowed it to use the Commission’s expedited 21-day review process through the Energy Division, but only for projects that are categorically exempt from CEQA.⁴² The Digital 299 Project is not categorically exempt from CEQA, as evidenced by the submission of an EA and issuance of the ISMND.

The Commission’s approval of Vero’s use of the informal review process was limited in Decision 19-06-024 to the types of construction disclosed by Vero in its CPCN application – “activities in existing rights-of-way and utility easements in developed areas where previous ground-disturbing activities have taken place.”⁴³ Decision 19-06-024 described the approved activities as “construction of reasonably short utility extensions (Class 3), and minor trenching and backfilling (Class 4), in previously disturbed areas, (Class 32).” (p. 5). The Digital 299 project clearly falls outside of these CEQA exemptions because it comprises 300 miles of construction, some of which is outside of previously disturbed areas and involves more than minor trenching and backfilling. “Digital 299 includes installation of new underground conduit; placement of fiber optic cables into existing available utility conduit; stringing fiber optic cable aerially onto existing utility poles or bridges; and construction of up to five prefabricated in-line amplifier (ILA) buildings to support signal regeneration, distribution, and interconnection.”⁴⁴

⁴¹ *Id.*

⁴² D.19-06-024

⁴³ Decision 19-06-024, at p. 4 (issued July 3, 2019).

⁴⁴ Digital 299 Broadband Project Initial Study/Mitigated Negative Declaration, ¶8.

Vero was not eligible to use the advice letter process and should have filed a formal application to modify its CPCN for a project that is not exempt from CEQA. Allowing Vero to continue with the informal resolution process for a non-CASF project violates the due process rights of interested parties by depriving them of any meaningful opportunity to participate in the evaluation of the Digital 299 project.

Resolution T-17766 further errs legally by endorsing Commission staff's decision that exceeded its authority. Because Vero's CPCN limited its construction activities only to project that are categorically exempt from CEQA, a non-exempt project such as Digital 299 required a modification of the CPCN. Staff does not have authority to waive a restriction set forth in a formal Commission decision.

C. Failing to Provide Public Notice About Vero's Adoption of the Project and Failing to Require an Application Violates Due Process and CEQA

The Commission's 2020 Annual Report on CASF Report stated that the Digital 299 project was terminated due to funding difficulties.⁴⁵ The 2021 Annual Report on CASF makes no mention of the Digital 299 project or a decision to authorize Vero to assume the project.⁴⁶ The Commission's summary of CASF projects indicates as of the date of this filing that the Digital 299 project is terminated.⁴⁷ Thus to the best of Velocity's knowledge, there was no public notice about Vero taking over the Digital 299 project.

⁴⁵ 2020 Annual Report California Advanced Services Fund, at p. 18 (Apr. 2021) available at <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/office-of-governmental-affairs-division/reports/2020/2020-casf-annual-report.pdf>.

⁴⁶ Available at <https://www.cpuc.ca.gov/-/media/cpuc-website/industries-and-topics/reports/2021-casf-annual-report.pdf>.

⁴⁷ Available at <https://www.cpuc.ca.gov/industries-and-topics/internet-and-phone/california-advanced-services-fund/casf-infrastructure-project-summaries>.

Resolution T-17766 errs legally by approving Vero's assumption of the Digital 299 project with no public notice. Because the Commission provided no public notice and failed to require Vero to file an application to modify its CPCN for the project, Velocity and all interested parties were deprived of any opportunity to participate in the CEQA review of Vero's project. Not until the draft EA/ISMND was issued was the public aware that Vero had assumed the Digital 299 project. Thus, Resolution T-17766 violates due process.

The process required for an administrative agency to reach a legal decision has been well settled for more than 80 years. In *Saginaw Broadcasting v. FCC*,⁴⁸ the U.S. Court of Appeals for the D.C. Circuit set forth a four-part test by which agency decisions must be evaluated: (1) evidence must be taken and weighed, both as to its accuracy and credibility; (2) from attentive consideration of this evidence a determination of fact of a basic or underlying nature must be reached; (3) from these basic facts the ultimate facts, usually in the language of the statute are to be inferred, or not, as the case may be; (4) from this finding the decision will follow by the application of the statutory criterion.⁴⁹ Thus the court made clear that an agency is required to base its decision on facts in the record upon which the ultimate findings of fact and conclusions must rely. The Commission did not do this in Resolution T-17766.

The *Saginaw* court made clear that "a mere conclusion" is not sufficient; rather an agency decision must include findings that are "specific enough to enable the court to review intelligently the decision of the commission and ascertain if the facts on which the commission

⁴⁸ 96 F.2d 554, 559 (D.C. Cir. 1938), *cert den. sub. nom Gross v. Saginaw Broadcasting Co.* 305 U.S. 613 (1938).

⁴⁹ *Id.*, at 559.

has based its order afford a reasonable basis for it.”⁵⁰ Without such basis, an agency order is void.⁵¹ The holdings in *Saginaw* are clearly binding on the Commission.

The California Supreme Court applied the *Saginaw* holding in reviewing a Commission decision and invalidated that decision for failing to set forth the facts upon which the decision was based.⁵² The California Supreme Court held that “[e]very issue that must be resolved to reach that ultimate finding is material to the order or decision.”⁵³ The California Supreme Court held that the Commission must state the material issues of fact and law that determine the ultimate issue⁵⁴ not only to avoid arbitrary and capricious decisions, but to enable a party to pursue an appeal.⁵⁵

Failing to provide any public notice about the resumed Digital 299 project also violates CEQA requirements. California law requires that an agency must provide public notice of its rationale during the review process and not merely after the fact by responding to comments on an already-prepared draft decision.⁵⁶ Failure to do so requires recirculation of the CEQA review document to allow for “meaningful public comment directed at the rationale for its [the agency’s] decision.”⁵⁷

By maintaining the project in the advice letter process, neither Velocity nor the public had the ability to become a party to or introduce evidence. Concerned parties were only able to file comments which were limited to five pages which is insufficient for such a project.

⁵⁰ *Id.*, at 561.

⁵¹ *Id.*, at 561.

⁵² *California Motor Transport Co. v. Public Utilities Com.*, 59 Cal.2d 270, 275 (1963).

⁵³ *Id.*, at 273.

⁵⁴ *Id.*, at 275.

⁵⁵ *Id.*, at 274.

⁵⁶ *Pesticide Action Network North America v. Department of Pesticide Regulation* (Cal. App. 1st Dist. 2017), 223 Cal. Rptr. 3d 226, 15 Cal. App. 5th 478, 2017 Cal. App. LEXIS 803, modified, (Cal. App. 1st Dist. Oct. 19, 2017), 2017 Cal. App. LEXIS 910.”

⁵⁷ *Id.*

Although the Commission asserts that it has broad discretion in decision making, its processes must comply with state law, including due process requirements. The Commission may not abuse its discretion, it must proceed in a manner required by law, and it must not apply its orders or regulations or state law in a discriminatory manner.⁵⁸ Resolution T-17766 violates all of these process requirements because it ignores or misstates material relevant record evidence, applies its requirements for CEQA approval arbitrarily to Vero without requiring any of the normal processes, ignores evidence that the project needs an updated EA and that the Department of Transportation cancelled the Digital 299 permit for environmental studies more than a year ago.. Further, material substantial changes to the environment have occurred that have not been recognized by the Commission and require new environmental review.

D. Resolution T-17766 Errs by Allowing Vero to Assume an Existing EA Despite Changed Circumstances in the Project Area

The Guidelines for the Implementation of CEQA, Section 15125, “Environmental Setting,” restrict use of an existing EIR/PEA to situations where there have been no substantial changes in the project area. Section 15125 requires that the environmental report include a description of the physical environment conditions in the vicinity of the project *as they exist at the time the notice of preparation is published*.⁵⁹ If there have been significant environmental changes in an area (as is the case here), then a new EIR would have to be completed in order to actually describe and reflect the “physical environmental conditions as they exist at the time the notice of preparation is published.”⁶⁰ A large portion of the Digital 299 Project area has suffered

⁵⁸ Cal. Pub. Util. Code Section 1757.1(a)(1) and (a)(2).

⁵⁹ Cal. Code Regs. tit. 14, § 15125.

⁶⁰ *Id.*

catastrophic wildfires in the last three years which drastically impacted the environment in the project area.

The CEQA statute addresses when environmental changes might necessitate a subsequent EIR. “When an environmental impact report has been prepared for a project pursuant to this division, no subsequent or supplemental environmental impact report shall be required by the lead agency or by any responsible agency, unless one or more of the following events occurs: (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report; (b) *Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report*; (c) *New information*, which was not known and could not have been known at the time the environmental impact report was certified as complete, *becomes available*.”⁶¹

Changed circumstances in the Digital 299 project area are well documented. As one example, the California Department of Transportation issued a stay of its permit for the project due to geological issues. Press reports documented the catastrophic wildfires in the vast majority of the project area in 2020 and 2021, which created substantial burn areas. The EA/ISMND concludes that there is a less than significant risk of erosion problems created by the project, but there's no discussion of the burn areas within the project area and the associated risks for erosion.⁶² Inyo began the Digital 299 Project in April of 2017. On October 10, 2017, an inspector with the California Department of Transportation raised concerns about “geological issues and access control locations.”⁶³ Inyo surrendered the CASF award and terminated Digital 299 on

⁶¹ Cal. Pub. Res. Code § 21166 (Deering); see also, Cal. Code Regs. tit. 14, § 15162. Subsequent EIRs and Negative Declarations, from the Guidelines for Implementing CEQA.

⁶² EA/ISMND, at p. 43-44.

⁶³ State of California Department of Transportation Encroachment Permit Report (Diary), p. 1.

September 17, 2020. On November 4, 2021, an inspector from the Department of Transportation noted that the permit for Digital 299 had been cancelled because it had expired and the project is not completed.⁶⁴

Since the Department of Transportation identified geological issues in 2017 and catastrophic wildfires occurred in the project area in 2020 and 2021, there is evidence that, “Substantial changes [have] occur[red] with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report; [and] New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, [has] become available.”⁶⁵

As described in the IS/MND, the Digital 299 Project is a 300-mile project⁶⁶, the "majority" is located in existing utility corridors⁶⁷, land uses included in or adjacent to the project area include "undeveloped woodland and forest land"⁶⁸. Although, the MND found that there is a less than significant risk of erosion problems created by the project, there was no discussion of whether burn areas within the project area could create higher risks for erosion.⁶⁹ The prior environmental report could not have taken into account ground disturbance in burn areas, so the environmental effect, including run off, is likely substantially worse than expected.

More than 1.3 million acres in Northern California⁷⁰ burned in 2021, almost entirely encompassing the Digital 299 Project area. Erosion from the burning, mudslides, and flooding from the atmospheric rivers that plagued the State in 2022 constitute a substantial change with

⁶⁴ Exhibit 2, Progress Billing/Permit Closure and Encroachment Permit Report (Diary).

⁶⁵ Cal. Pub. Res. Code § 21166 (Deering); see also, Cal. Code Regs. tit. 14, § 15162. Subsequent EIRs and Negative Declarations, from the Guidelines for Implementing CEQA.

⁶⁶ IS/MND, at p. 1.

⁶⁷ IS/MND, at p. 2.

⁶⁸ IS/MND, at p. 2.

⁶⁹ IS/MND, at p. 2.

⁷⁰ State of California Encroachment Permit application of Inyo Networks, March 7, 2017.

respect to the circumstances under which the project is being undertaken, will likely require revisions to the environmental impact report under Section 21166(b), and constitutes new information that could not have been known at the time of the original report, satisfying Section 21166(c).⁷¹ Thus, with environmental impacts which were not accounted for in the IS/MND, new EIRs must be completed in accordance with Section 21166 subsections (b) and (c).⁷²

Moreover, the original project proponent (Inyo) incorrectly reported on its Standard Encroachment Permit Application filed with the California Department of Transportation that the Project would not require the disturbance of soil;⁷³ yet Inyo informed the Commission that the project would include undergrounding conduit and replacement of utility poles, all of which clearly creates ground disturbance:⁷⁴ “Digital 299 includes installation of new underground conduit; placement of fiber optic cables into existing available utility conduit; stringing fiber optic cable aerially onto existing utility poles or bridges; and construction of up to five prefabricated in-line amplifier (ILA) buildings to support signal regeneration, distribution, and interconnection.”⁷⁵

After the natural disasters of 2020 and 2021, massively devastating fires, erosion, and mudslides⁷⁶, Inyo’s original environment reports from 2018 that Vero now relies on, no longer

⁷¹ Cal. Pub. Res. Code § 21166 (Deering); see also, Cal. Code Regs. tit. 14, § 15162. Subsequent EIRs and Negative Declarations, from the Guidelines for Implementing CEQA.

⁷² Cal. Pub. Res. Code § 21166 (Deering); see also, Cal. Code Regs. tit. 14, § 15162. Subsequent EIRs and Negative Declarations, from the Guidelines for Implementing CEQA.

⁷³ Exhibit 2, State of California Department of Transportation Standard Encroachment Permit Application, p. 2, question 22.

⁷⁴ IS/MND p. 1, at para 8.

⁷⁵ *Id.*

⁷⁶ Jessica Skropanic and Damon Arthur, *Northern California fire updates: Growth in Trinity County fires grinds to a halt*, Redding Record Searchlight (Aug 24, 2021), <https://www.redding.com/story/news/2021/08/19/northern-california-fires-burn-more-than-1-million-acres/8190993002/>. “Fires burning in Northern California destroyed nearly 1.3 million acres as of Monday. That total includes the massive Dixie Fire, which as burned 1,100 square miles in Plumas, Lassen Butte, Tehama, and Shasta counties.”

reflect the existing environmental conditions. These substantial changes in the project area necessitate an updated environmental review and it is legal error to allow Vero to rely on Inyo's now out of date EIR. Further, the use of a deficient EIR calls into question the validity of the public comment period in February 2022 because neither the Commission nor the public were looking at relevant information.

It is also legal error for Resolution T-17766 to authorize Vero's project because it lacks a valid permit from California Department of Transportation to proceed. Inyo's original permit from the State of California Department of Transportation claims that the Digital 299 project will not cause ground or soil disturbance.⁷⁷ There is no evidence that the Department of Transportation permit for environmental studies has been corrected or reissued or that a construction/encroachment permit has been issued.

By violating the CEQA statute, Resolution T-17766 violates California Public Utilities Code Section 1757.1(a), which requires it to act in a lawful manner and which requires the Commission not to act in an arbitrary and capricious manner.⁷⁸ The Commission should grant rehearing to correct this legal error.

E. Resolution T-17766 Violates CEQA By Failing to Consider Project Alternatives

The CEQA statute requires the consideration of alternatives to the proposed project. "The Legislature finds and declares that it is the policy of the state that public agencies *should not* approve projects *as proposed if there are feasible alternatives*" to the proposed project that would lessen significant environmental effects of such projects."⁷⁹ Thus, CEQA requires an evaluation of environmental issues, such as feasible alternatives. For example, the Air Resources

⁷⁷ Exhibit 2.

⁷⁸ Cal. Pub. Util. Code Section 1757.1(a).

⁷⁹ Cal. Pub. Res. Code § 21002 (Deering)

Board was determined to have violated CEQA by prematurely approving regulations at its public hearing before it completed its environmental review in *POET, LLC v. State Air Resources Bd.*⁸⁰

Velocity submitted evidence into the record that the majority of the project area already has broadband facilities⁸¹ Yet neither Resolution T-17766 nor the EA/ISMND took these existing facilities into account to determine whether the environmental harms from the Digital 299 project could be avoided by either eliminating portions of the Digital 299 project in areas with existing broadband or requiring Vero to use existing facilities rather than disturbing the environment by constructing new duplicative facilities.

Moreover, if a CEQA report lacks environmental base line information, assessment of cumulative reports, and fails to address any feasible alternatives, it fails to comply with CEQA. The California Department of Pesticide Regulation was found to have violated CEQA because its public reports supporting approval of amended labels for two previously registered pesticides *lacked environmental baseline information, lacked an assessment of cumulative impacts, and failed to address any feasible alternative to registering the proposed new uses for the pesticides*, but rather, were clear that no alternatives were proposed.⁸²

Similarly, Vero's PEA, and consequently the Commission's EA/ISMND lack environmental base line information because they are out of date and therefore do not reflect the current environment. Additionally, because the Commission fails to acknowledge that there are

⁸⁰ *POET, LLC v. State Air Resources Bd.* (Cal. App. 5th Dist.), 217 Cal. App. 4th 1214, 2013 Cal. App. LEXIS 554, reprinted, sub. op., (Cal. App. 5th Dist. 2013), 218 Cal. App. 4th 681, 160 Cal. Rptr. 3d 69, 2013 Cal. App. LEXIS 641, modified, (Cal. App. 5th Dist. Aug. 8, 2013), 2013 Cal. App. LEXIS 632; see also, Cal. Pub. Res. Code § 21002 (Deering).

⁸¹ Comments of Velocity Communications, Inc. Identifying Deficiencies in Digital 299 Project Environmental Assessment, at p. 2, Feb. 2, 2022.

⁸² *Pesticide Action Network North America v. Department of Pesticide Regulation* (Cal. App. 1st Dist. 2017), 223 Cal. Rptr. 3d 226, 15 Cal. App. 5th 478, 2017 Cal. App. LEXIS 803, modified, (Cal. App. 1st Dist. Oct. 19, 2017), 2017 Cal. App. LEXIS 910. ("Pesticide Action").

inconsistencies in Inyo’s original reports and catastrophic wildfires have occurred in the project area since the initial studies, the Commission’s MND lacks proper assessment of the cumulative reports. Resolution T-17766 fails to comply with the CEQA statute and thereby commits legal error. By violating the CEQA statute, Resolution T-17766 violates California Public Utilities Code Section 1757.1(a), which requires it to act in a lawful manner and which requires the Commission not to act in an arbitrary and capricious manner.⁸³ The Commission should grant rehearing to correct this legal error.

F. Resolution T-17766 Violates CEQA Prohibition on Piecemealing

Resolution T-17766 also violates CEQA’s prohibition on piecemealing. A reviewing agency is not allowed to allow a proponent to break a large project into smaller pieces to evade environmental review.⁸⁴ Although related activities that are similar in nature may be considered separate projects (as opposed to a single project) but only if the subsequent activities *are not a foreseeable consequence* of the other.⁸⁵ Here, Vero acknowledges that it intends to install additional components of the network after this approved phase. Specifically, it intends to install cellular towers,⁸⁶ and an unknown number of utility poles.⁸⁷

Vero provides no details about the location of these facilities or environmental study. Rather, Vero makes only vague statements about its subsequent intended construction. “The number of existing poles that would need to be replaced cannot be known prior to permit

⁸³ Cal. Pub. Util. Code Section 1757.1(a).

⁸⁴ *Laurel Heights Improvement Ass’n v. Regents of Univ. of Cal.*, 47 Cal. 3d 376 (1988). Piecemealing also violates the National Environmental Protection Act (“NEPA”). See Exhibit 4, Comments of EPIC-Environmental Protection Information Center on Digital 299 Scoping dated August 13, 2019, at p. 2 (excerpted from EA/ISMND Exhibit O).

⁸⁵ *Aptos Council v. City of Santa Cruz*, 10 Cal. App. 5th 266, 282 (2017).

⁸⁶ Initial Study, at p. 1. Available at https://ia.cpuc.ca.gov/environment/info/transcon/Final_EA/Appendix%20A%20-%20ISMND/D299%20Initial%20Study%202022%201018.pdf

⁸⁷ EA/ISMND, Exhibit O (response to Travis Finch #1).

issuance because last-mile aerial attachments would be built in 2024 or later once the construction of the middle-mile route is complete, during which time the location and condition of existing poles could change. The number of poles, if any, that would need to be replaced, and the effects of replacing those poles, would be determined prior to the construction of the last-mile segments.”⁸⁸ The placement of these subsequent facilities is clearly foreseeable yet Vero has provided no environmental study or assessment for them.

It is legal error for Resolution T-17766 to approve the Digital 299 project despite having specific knowledge that Vero intends to piecemeal the project by carrying out identified future construction that has not been subject to CEQA review. By violating the CEQA statute, Resolution T-17766 violates California Public Utilities Code Section 1757.1(a), which requires it to act in a lawful manner and which requires the Commission not to act in an arbitrary and capricious manner.⁸⁹ The Commission should grant rehearing to correct this legal error.

G. The Commission Failed to Address All the Concerns Velocity and Others Raised in Comments in Violation of State Law.

Under state law, Commission decisions must be based on the entire record in the proceeding.⁹⁰ Further, any Commission conclusions must be supported by factual findings based on evidence.⁹¹ A clear record is required on every issue in a Resolution, and ambiguity as to the basis for any decision set forth in a Commission decision is grounds for rehearing, as the Commission recognized in D.10-05-052.⁹² Nonetheless, Resolution T-17766 ignores the

⁸⁸ *Id.*

⁸⁹ Cal. Pub. Util. Code Section 1757.1(a).

⁹⁰ Cal. Pub. Util. Code Section 1757.1(a)(4); *see also* Commission Rules of Practice and Procedure Rule 8.3(k).

⁹¹ Cal. Pub. Util. Section 1757.1(a)(4).

⁹² D.10-05-052, 2010 Cal. PUC LEXIS 187 (Cal. P.U.C. May 20, 2010), at *17 (the Commission granted rehearing on an executive compensation issue in an informal rate case proceeding because there was ambiguity as to the basis for that portion of the decision).

concerns raised in comments by Velocity⁹³ and others commenters in response to the draft EA/ISMND. By violating the CEQA statute, Resolution T-17766 violates California Public Utilities Code Section 1757.1(a), which requires it to act in a lawful manner and which requires the Commission not to act in an arbitrary and capricious manner.⁹⁴

Velocity submitted comments on the Commission's draft Environmental Assessment on February 3, 2022, raising the concern that placement of poles could cause ground disturbance. "Based on local observation, several areas designated for aerial construction do not have existing poles and will require them to be installed, causing ground disturbance and degradation of aesthetics. The entire project could likely shift from a very small amount of aerial construction to a significant amount based on geology. One of the reasons given for Inyo Networks abandoning the project was that the California Department of Transportation did not want underground cable installed along certain portions of Highway 299. Indeed, the Department of Transportation eventually terminated Inyo's permit in late 2021.

Vero should be required to provide a detailed analysis of the likelihood of obtaining Caltrans permits for underground installation of its facilities and analysis of the environmental effect of shifting to a substantial amount of aerial installation and submit a revised Aerial Construction alternative."⁹⁵ However, this concern was not addressed in Final Resolution T-17766.⁹⁶ Resolution T-17766 merely asserts that "The EA/ISMND adequately analyzed the potential impact of aerial structures and found them to be less than significant." Additionally, this determination does not appear to account for the change in local conditions from the

⁹³ Comments of Velocity Communications, Inc. Identifying Deficiencies in Digital 299 Project Environmental Assessment, at p. 1, Feb. 2, 2022.

⁹⁴ Cal. Pub. Util. Code Section 1757.1(a).

⁹⁵ Comments of Velocity Communications, Inc. Identifying Deficiencies in Digital 299 Project Environmental Assessment, at p. 2, Feb. 2, 2022.

⁹⁶ See Resolution T-17766, pp.4-5.

devastating wildfires of 2020 and 2021. Further, in Exhibit O of the EA/ISMND, a commenter expressed concerns about "fragile soils" in the project area in Humboldt County: "I am concerned about the fragile soils of the Titlow Hill area. My hope is that it [will] follow Hwy 299, not the proposed alternate route that does not follow Hwy 299. . . ." ⁹⁷ NOAA raised concerns about the risk of sedimentation and Velocity raised concerns about erosion due to replacement of utility poles. ⁹⁸ Resolution T-17766 did not address any of these concerns.

H. Finding that Project Area is Underserved is Factual Error

Resolution T-17766 states that Vero's Digital 299 network will deploy advance communications infrastructure in underserved areas. ⁹⁹ This holding is factually incorrect. Vero did not submit evidence showing that the areas in the Digital 299 project area are underserved. Thus, the data on which Resolution T-17766 relies is entirely from Inyo's CASF application, which was submitted in August of 2015. ¹⁰⁰ All public meetings regarding the need for broadband occurred in 2019. ¹⁰¹

The Commission's own broadband map shows that the majority of populated areas in the Digital 299 project are served with broadband. Specifically, the communities of Willow Creek, Salyer, Hawkins Bar, Junction City, Weaverville, Douglas City, Lewiston, and French Gulch are all shown as being served with broadband on the Commission's map. Further, Velocity provided evidence in the record that the Digital 299 service area is served by multiple middle-

⁹⁷ Resolution T-17766, EA/ISMND, at Exhibit O.

⁹⁸ Resolution T-17766, EA/ISMND at Exhibit O (Comments of NOAA and Velocity); Exhibit 2; Comments of Velocity Communications, Inc. Identifying Deficiencies in Digital 299 Project Environmental Assessment, at p. 2-3, Feb. 2, 2022.

⁹⁹ Resolution T-17766, at p. 3.

¹⁰⁰ Resolution T-17548, at p. 2.

¹⁰¹ Digital 299 Broadband Project Newsletter, at p.1 (Jan 2022). Available at https://ia.cpuc.ca.gov/environment/info/transcon/Digital_299_Project/D299%20Project%20Newsletter%202%202021%201228.pdf.

mile broadband providers.¹⁰² Specifically, Velocity noted that there is already existing fiber optic infrastructure between Weaverville and Redding. AT&T has fiber optic infrastructure running south along Highway 299 from Weaverville, then along Highway 3 to Deerlick Springs Road, then south to Highway 36 and east to Red Bluff. Additionally, there is currently existing federally-owned fiber optic infrastructure running along high-voltage transmission lines between Weaverville and Redding that will soon be made available for commercial access. Given that Vero is a new project proponent as of 2021, it should have been required to demonstrate that the Digital 299 area is actually underserved because this alleged public benefit is identified as the primary justification for the environmental harms from the project.

It is also a legal error for Resolution T-17766 to approve Vero’s project without determining whether existing broadband infrastructure already exists in the project area. Under Cal. Pub. Res. Code § 21081, agencies reviewing CEQA projects must consider whether there are alternatives that would cause less environmental harm.¹⁰³ Here, the Commission should have taken into account existing broadband infrastructure in the project area, and therefore considered “no project” for those areas as an alternative to Vero’s proposed project.

I. Resolution T-17766 Adopts EA/ISMND Which Errs Legally and Factually Regarding Installation of New Poles

The EA/ISMND states erroneously that “Neither new roads nor new poles are proposed as part of this Project.”¹⁰⁴ Velocity provided evidence in comments on the ISMND, however, that new poles will almost certainly be required. Vero acknowledged that new poles may be needed. In Exhibit O of the EA/ISMND, Vero stated, “[t]he number of existing poles that would

¹⁰² Comments of Velocity Communications, Inc. Identifying Deficiencies in Digital 299 Project Environmental Assessment, at p. 2, Feb. 2, 2022.

¹⁰³ Cal. Pub. Res. Code § 21081 (Deering).

¹⁰⁴ EA/ISNND, at p. 1, ¶8 (“Digital 299 includes installation of new underground conduit”).

need to be replaced cannot be known . . . [t]he number of poles, if any, that would need to be replaced, and the effects of replacing those poles, would be determined prior to the construction of the last-mile segments.” It is a factual error for the EA/ISMND to state that there will be no new poles, when in fact Vero acknowledges it may install new poles. It is also a legal error for Resolution T-17766 to allow the project to proceed without having any way to know what environmental effects will occur from pole installation, particularly given the extensive burn areas in the Digital 299 route. As Velocity noted in its comments on the Environmental Assessment, if existing poles are not usable, they will need to be replaced, resulting in ground disturbance for which there has been no archeological, biological or botanical analysis or Native American consultation.¹⁰⁵

IV. REQUEST FOR ORAL ARGUMENT

Pursuant to Rule 16.3, Velocity requests oral argument be scheduled for this Application for Rehearing. Velocity believes oral argument will materially assist the Commission in resolving the issues set forth in this Application. Velocity notes several recent applications for rehearing have questioned the processes used by the Communications Division to evaluate CASF applications. Velocity respectfully submits that oral argument would provide a full opportunity for the Commission to consider whether modifications are needed in the context of Velocity’s challenge specifically, but also on a more global basis.

V. CONCLUSION

Velocity has demonstrated herein that Resolution T-17766 contains legal and factual errors that must be corrected. Therefore, Velocity respectfully requests that the Commission reconsider the decision in the Resolution to allow Vero Network to proceed with the Digital 299

¹⁰⁵ *Velocity Communications, Inc. Comments on Draft Resolution T-17766, at p. 4 (Nov. 30, 2022).*

Project and instead require Vero to update its environmental studies to reflect the current situation in the project area, conduct a study of subsequent construction of cell towers and replacement of utility poles, and file a formal application seeking CEQA review for the Digital 299 project.

Signed and dated January 17, 2023, at Walnut Creek, CA.

Respectfully Submitted,

/s/ Anita Taff-Rice

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EXHIBIT 1

INYO LETTER TO CASF



September 17, 2020

Via email

Robert Osborn
Director, Communications Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

RE: Termination of Digital 299 Broadband Project, granted in Resolution T-17548
and a Further Request for Additional Funds filed November 12, 2019

Dear Mr. Osborn:

On March 23, 2017, the California Public Utilities Commission (CPUC) awarded Inyo Networks, Inc. (Inyo) a grant for the Digital 299 Middle Mile and Last Mile Broadband Project (Digital 299) through Resolution No. T-17548. Inyo sought this grant at the request of the Redwood Coast Connect Broadband Consortium which had designated the route as their region's highest priority in an attempt to reach 98% of households in the consortium's region, a goal AB1665 gave to the CPUC to achieve. As set forth in great detail in our pending November 12, 2019 Request for Additional Funds filed with the Communications Division Director, due to unexpected circumstances beyond the grantee's control including route changes requested by a state agency and increases in costs and labor, Inyo notified the Commission that the Digital 299 project had increased substantially in cost. Inyo requested the "rightsizing" of the CASF funds for the project, citing past Commission precedent supporting funding of exogenous costs. In the Request for Additional Funds, Inyo requested an additional amount of \$40,343,067 (69.6%) from CASF and committed itself to provide a match of \$38,022,758, an increase of \$15,098,226 from the original budget.

Today with a heavy heart, Inyo is notifying the Commission of its immediate intent to terminate the Digital 299 project due to lack of funds for the project as described in Inyo's November 12, 2019 Request for Additional Funds. One factor is that the Commission has taken no action on the pending Request for Additional Funds and Inyo can no longer sustain the project without any CASF funds granted to date. Second, Inyo's new match of over \$38 million for the current project has proven to be too heavy of a lift.

Inyo applied for a USDA ReConnect grant/loan of \$38,022,758 but there has not been any feedback from USDA to date and, frankly, the USDA application had proposed service areas for

the project that were very chopped up due to USDA program rules that allow only unserved areas. Inyo does not feel confident that this USDA ReConnect loan will be granted.

Inyo had secured its match for the initial grant. However, given the additional request, Inyo had to search for significant new funding for its new higher match. Inyo initially had lined up a significant IRU lease for dark fiber to help fund this significant match but the firm deadline the project needed to meet has now passed. The lack of Commission approval on the Request Additional Fund by May 2020 has caused the company to decline to proceed further with the proposed IRU contract. Given Inyo has spent nearly \$3.4 million of its own funds to date, Inyo cannot afford to continue the project, with no certainty of funding for the additional amount or its own additional match requirement.

No CASF funds have been withdrawn for the Digital 299 project to date. Due to its good faith effort to bring this project to completion and due to circumstances beyond Inyo's control that resulted in exogenous costs as described in detail in its November 12, 2019 Request for Additional Funds and herein, Inyo respectfully requests \$2,357,196 in CASF funding which it has expended to date, representing 69.4% of the \$3,386,776 in costs to date. Inyo will absorb the other 30.4% (\$1,029,580) of the costs.¹ Inyo recognizes that the current CASF rules do not anticipate this situation² and does not provide a clear procedural path for recoupment of good faith expenditures on a CASF project. Inyo respectfully requests that the Commission to allow this one-time reimbursement under these very unique circumstances. This situation will bring substantial funds back into the CASF account, and this will allow other worthy CASF projects to go forward, including other projects that Inyo is pursuing.

CASF Approved Budget

In the original pre-AB 1665 grant in T-17548, funding in the amount of \$46,709,036 from the California Advanced Services Fund (CASF) Infrastructure Fund was approved. The CASF grant constitutes 69.6 percent of the initial total project cost of \$69,633,568.³ Applicant Inyo Networks was to provide 30.4 percent or \$22,924,532 of the total project cost. The middle-mile project portion (which constitutes the vast majority of the project) was funded at the 70% level, and the small Lewiston last mile portion of the project is funded at the 60% level. Funds for the project were to be made available upon the completion of CEQA, as typical for CASF-funded projects.

In detail in Inyo's November 12th request which we incorporate by reference, Inyo related a number of changed conditions which were outside its control, including a request by Caltrans to not place part of the D299 path on State Route 299 which caused an move of part of the

¹ The D299 grant had a match ration of 69.6% CASF grant – 30.4% Applicant; this maintains that match.

² Section 16 of the CASF rules do not have provisions for potential reimbursement where an applicant has expended its own funds in good faith but received no CASF funds and is terminating the project for circumstances beyond its control.

³ Resolution T-17548, at p. 3. Portions of the project were disallowed in some areas of Cottonwood to Redding, and Weaverville, due to challenges, resulting in an eligible budget of \$67,073,674.

backbone onto unimproved USFS and logging roads through portions of the Shasta-Trinity and the Six Rivers National Forests. This new path added 14.2 additional miles of backbone on unimproved roads (as opposed to a highway). This change caused increases in materials, labor and construction costs. Inyo issued two sets of Solicitations (Request for Proposals) to obtain realistic and up-to-date bids.

Inyo's Request for Out-of-Pocket Expenses to Date

As an indication of Inyo's commitment to date, Inyo invested \$3,386,776 in project development (pre-award and post-award). See Attachment A for the details as of August 21, 2020.⁴ Consistent with CASF rules, Inyo has not received any CASF funds to date, and has funded every penny itself. The work on the project has been significant. Inyo accomplished these milestones to date.

Permits: Inyo substantially completed the environmental permitting process including project scoping, field surveys tribal consultation and agency consultation for CEQA and NEPA. Inyo had been preparing final reports, with targeted permit completion permits by close of January. To understand the complexity of this project, the environmental permitting process involved approximately 50 agencies.

Engineering: Inyo completed and mapped the end-to-end route design, including running line, anchor connections, and laterals. Land ownership and parcel information were inventoried. Inyo completed network design and pole line documentation of the Lewiston last mile network. Inyo completed working drawings with environmental mitigation measures incorporated.

Procurement: Inyo added a project procurement officer to our project management office for contract administration. Inyo issued Requests for Proposals for environmental consulting, electronics, nodes, cable, conduit, vaults, and underground construction (twice). These were used in budget validation.

Community Outreach: Inyo participated in various statewide broadband conferences to increase visibility of Digital 299, taking part in policy discussions and agency collaboration. Inyo also engaged in extensive local community outreach to schools, hospitals, tribal governments, and local agencies. Formal presentations at numerous conferences, economic development forums, and county/civic interest group events (California Broadband Council (CBC), California State Association of Counties (CSAC), Rural County Representatives of California (RCRC), etc. Digital 299 has a very high profile both statewide. At a federal level, Inyo met with senior staff in the US Department of Agriculture, Federal Communications Commission, and the Department of Commerce and various elected officials, thus establishing a high profile at the national level, as well.

⁴ Attachment A is a Construction in Progress Account through July 22, 2020. Categories include Payroll Allocations, Subcontractors and Equipment, Permits and Applications, Legal Fees, Grant Development, Travel Costs, and Project Management/Market Analysis/Other.

Economic Development: Inyo worked with California Center for Rural Policy, RRDEC, Rural County Representatives of California (RCRC) and others. Inyo teamed up with the Humboldt Bay Harbor District (Harbor District) to transform legacy assets through broadband availability. In addition to raising broadband awareness in the area, these efforts will help the region, and the state, to remain competitive in the global information economy.

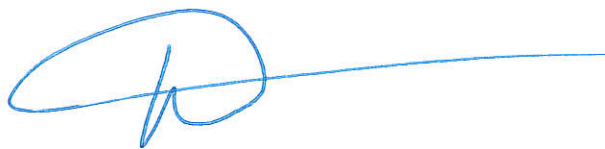
Pre-Sales and Matching Funds: Inyo reached out on a nationwide basis to a broad set of public and private sources to close funding gap. In addition to some level of success in capital markets, we have brought international players to the table to acquire dark fiber on the route. We continue meeting with state and federal agencies on relevant safety, economic development and disaster recovery programs. In April, encouraged to do so by a number of local, state and federal stakeholders, Inyo applied for federal funds under the USDA ReConnect Broadband Program, which included \$25,000,000 in grants funds and \$38,022,758 in loans. This application required the project to be sub-divided into over 39 discrete, discontinuous projects to meet the application structure of the USDA's program.

Timing Considerations

In its November 12th request, Inyo stated that project construction will take thirty (30) months once shovels are in the ground, leading to several years before network completion. Inyo requested that the Commission decide on this request for additional CASF funds by May 2020. It is now August 2020, and there is no indication that an approval will be forthcoming for the full amount of the additional request. Given the delay, Inyo has lost a key contract for an IRU for dark fiber that would have helped fund its additional match. At this point, Inyo feels it has no choice but to withdraw from the project and seek out of pocket costs that it expended in good faith in reliance on the initial grant.

Inyo makes clear that it is disappointed, because it strongly believes in the many benefits the Digital 299 project will bring to the State's commitment to close the Digital Divide and ensure that a secure, reliable communications infrastructure is deployed to one the most vulnerable parts of the state. With the wildfire threat increasing, this project would also have played a key role in advanced communications to assist in prevention, communications during a disaster, and recovery scenarios. The benefits of a successful Digital 299 is not inconsequential. We look forward to discussing this request with Communications Division leaders.

Respectfully submitted,



Nicholas Keeler
President, Inyo Networks, Inc.

cc: Michael Minkus
Louise Fischer
President Marybel Batjer
Commissioner Martha Guzman Aceves
Commissioner Clifford Rechtschaffen
Commissioner Liane Randolph
Commissioner Genevieve Shiroma

Attachment A

EXHIBIT 2

**EXCERPTS FROM A TRUE AND CORRECT COPY OF THE INYO
ENCROACHMENT PERMIT FROM THE STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

ENCROACHMENT PERMIT

TR-0120 (REV. 6/2000)

In compliance with (Check one):

☒ Your application of **March 7, 2017**☐ Utility Notice No. _____ of _____☐ Agreement No. _____ of _____☐ R/W Contract No. _____ of _____

TO:

Inyo Networks
10630 Town Center Drive, Suite 117
Rancho Cucamonga, CA 91730

Attention: Oscar Mejia
Phone: 909-457-8436

 Permit No.
0217-6SV-0144

 Dist/Co/Rte/PM
02-SHA-299-0.0/22.0
02-TRI-299-0.0/72.25

 Date
April 28, 2017

Fee Paid \$	Deposit \$ 820.00
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Performance Bond Amount (1) \$	Payment Bond Amount (2) \$
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Bond Company

Bond Number (1)	Bond Number (2)
-----------------	-----------------

Customer Reference No.

, PERMITTEE

and subject to the following, PERMISSION IS HEREBY GRANTED to:

Perform biological and environmental pedestrian surveys within the State's right-of-way between post miles 0.0 (Buckhorn Summit) and 22.0 (Buenaventura Boulevard) on State Route 299 in Shasta County, and between post miles 0.0 (South Fork Trinity River Bridge) and 72.25 (Buckhorn Summit) on State Route 299 in Trinity County.

PERMITTEE RESPONSIBILITY: It is understood and agreed by the Permittee that utilizing this permit shall constitute an acceptance of the provisions of this Permit and all attachments.

GENERAL SPECIFICATIONS:

NOTIFY PERMIT REPRESENTATIVE: At least five working days prior to beginning work (**ten days if any lane closures or traffic control will be necessary**), notify Permit Inspector **Steve Veatch**, telephone **530-225-3306**, 1657 Riverside Drive, Redding, CA 96001, **who will arrange for a required pre-work meeting** and for inspection and approval of the work covered by this permit.

(Continued)

THIS PERMIT IS NOT A PROPERTY RIGHT AND DOES NOT TRANSFER WITH THE PROPERTY TO A NEW OWNER.

The following attachments are also included as part of this permit (Check applicable):

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	General Provisions
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	Utility Maintenance Provisions
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Special Provisions Permit Closure Schedule, Safety for Surveyors
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	A Cal-OSHA permit, if required: Permit No. _____
<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	As-Built Plans Submittal Route Slip for Locally Advertised Projects
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Storm Water Special Provisions

In addition to fee, the permittee will be billed actual costs for:

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	Review
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Inspection
<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Field Work

(If any Caltrans effort expended)

☐ Yes ☒ No The information in the environmental documentation has been reviewed and is considered prior to approval of this permit.This permit is void unless the work is completed before **December 31, 2018**.

This permit is to be strictly construed and no other work other than specifically mentioned is hereby authorized.

No project work shall be commenced until all other necessary permits and environmental clearances have been obtained.

1 - Permittee
1 - Veatch
1 - Maintenance Supervisor
1 - Matt Mitchell, Environmental

APPROVED:

DAVID MOORE, District Director, District 2

BY:



TW

ANTHONY PASCAL, Acting District Permit Engineer, District 2

1 - File

ADA Notice

FM 91 1436

For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 653-3657 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

PERMIT NO.	02176SV0144	YR	21	MO	11	DA	04
DIST/CO/RTE/PM	02/SHA/TR1/299/VAR	TOTAL HOURS IN THIS REPORT					
		2.5					

10-10-17 (10-1130) MET W/ RICH MUNSTER, CLINT BURKENPAS,
JERMEIA REGARDING INVO'S PROPOSED ROUTE
DISCUSSED ROUTE, SCHEDULE, PERMITS, AND CALTRANS
PROTECTS. INFORMED WORK WOULD NEED TO BE
STAGED, TALKED ABOUT GEOLOGICAL ISSUES, AND RMV
CONCERNS W/ ACCESS CONTROL LOCATIONS. 1.5
11-4-21 SUBMIT FOR CLOSE-OUT. PERMIT EXPIRED.
PROJECT NOT COMPLETE. 1.0

SIGNATURE OF STATE REPRESENTATIVE

Steve Veatch

DATE

11-4-2021

ADA Notice

For individuals with sensory disabilities, this document is available in alternate formats. For alternate format information, contact the Forms Management Unit at (916) 445-1233, TTY 711, or write to Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

STANDARD ENCROACHMENT PERMIT APPLICATION

TR-0100 (REV. 03/2015)

Please type or print clearly your answers. Complete ALL fields, write "N/A" if not applicable.
This application is not complete until all requirements have been approved.

Permission is requested to encroach on the State Highway right-of-way as follows:

1. COUNTY Trinity / Shasta		2. ROUTE 299 / 3	3. POSTMILE Sh2 - 0.0/22.0 <small>(299) TRI 0.005 - SHA 22.238; (3) TRI 51.575 - TRI 30.868</small>		FOR CALTRANS USE PERMIT NO. 0217-6SV-0144 DIST/CO/RTE/PM 02-Tr, Sh2-3, 299-VAP SIMPLEX STAMP 170144 02 3/1 S V
4. ADDRESS OR STREET NAME HWY 299 / HWY 3		5. CITY Tr - 0.0/22.25			
6. CROSS STREET (Distance and direction from project site) <small>Along HWY 299 Corridor / Along HWY 3 between Douglas City & Weaverville</small>		7. PORTION OF RIGHT-OF-WAY Pavement, Shoulder, Back of Curb & Slope			
8. WORK TO BE PERFORMED BY <input checked="" type="checkbox"/> OWN FORCES <input type="checkbox"/> CONTRACTOR		9. ESTIMATED START DATE May 1, 2017			
11. EXCAVATION	MAX. DEPTH N/A	AVG. DEPTH N/A	AVG. WIDTH N/A	LENGTH N/A	10. ESTIMATED COMPLETION DATE May 1, 2018
12. ESTIMATED COST WITHIN STATE HIGHWAY RIGHT-OF-WAY \$ 125,088.00				FUNDING SOURCE(S) <input type="checkbox"/> FEDERAL <input checked="" type="checkbox"/> STATE <input type="checkbox"/> LOCAL <input type="checkbox"/> PRIVATE	
13. PIPES	PRODUCT TYPE N/A	DIAMETER N/A	VOLTAGE / PSIG N/A		14. CALTRANS' PROJECT CODE (ID) N/A
15. <input type="checkbox"/> Double Permit Parent Permit Number N/A Applicant's Reference Number / Utility Work Order Number D299					

16. Have your plans been reviewed by another Caltrans branch? ☒ NO ☐ YES (If "YES") Who? _____

17. Completely describe work to be done within STATE Highway right-of-way:

Attach 6 complete sets of plans (folded to 8.5" x 11") and any applicable specifications, calculations, maps, etc.

Conduct Field Surveys along Hwy 299 & Hwy 3 in order to; 1. Validate fiber optic Network Routes in order to solidify and confirm the final Network Route Design. 2. Survey pole lines and potential telecommunication conduit running lines for Backbone and lateral designs. 3. Finalize Transport/Backbone Route and Node Locations.

Conduct Environmental Field Surveys along Hwy 299 & Hwy 3 to gather information required for CEQA / NEPA approvals. An environmental assessment and initial study will be required respectively for NEPA and CEQA documentation. Review will be followed by an appropriate analysis of expected environmental impacts resulting from project construction and operation.

18. Is a City, County or other public agency involved in the approval of this project?

☐ YES (If "YES", check type of project AND attach environmental documentation and conditions of approval)

☐ COMMERCIAL DEVELOPMENT ☐ BUILDING ☐ GRADING ☐ OTHER _____

☐ CATEGORICALLY EXEMPT ☐ NEGATIVE DECLARATION ☐ ENVIRONMENTAL IMPACT REPORT ☐ OTHER _____

☒ NO (If "NO", please check the category below which best describes the project AND answer questions A - K on page 2)

☐ DRIVEWAY OR ROAD APPROACH, RECONSTRUCTION, MAINTENANCE OR RESURFACING

☐ FENCE

☐ PUBLIC UTILITY MODIFICATIONS, EXTENSIONS, HOOKUPS

☐ MAILBOX

☐ FLAGS, SIGNS, BANNERS, DECORATIONS, PARADES AND CELEBRATIONS

☐ EROSION CONTROL

☒ OTHER **Surveying / Engineering / Environmental**

☐ LANDSCAPING

STANDARD ENCROACHMENT PERMIT APPLICATION

TR-0100 (REV. 03/2015)

PERMIT NO. _____

The following questions must be completed when a City, County or other public agency **IS NOT** involved in the approval of this project.

Your answers to these questions will assist Departmental staff in identifying any physical, biological, social or economic resources that may be affected by your proposed project within State Highway right-of-way and to determine which type of environmental studies may be required to approve your application for an encroachment permit.

It is the applicant's responsibility for the production of all required environmental documentation and supporting studies and in some cases this may be costly and time consuming. If possible, attach photographs of the location of the proposed project. Please answer these questions to the best of your ability. Provide a description of any "YES" answers (type, name, number, etc.)

A. Will any existing vegetation and/or landscaping within State Highway right-of-way be disturbed?

No

B. Are there waterways (e.g. river, creek, pond, natural pool or dry streambed) adjacent to or within the limits of the project or State Highway right-of-way?

Yes, Survey work will be performed along the bridges and culverts.

C. Is the proposed project located within five miles of the coast line?

No

D. Will the proposed project generate construction noise levels greater than 86 dBA (e.g. jack-hammering, pile driving)?

No

E. Will the proposed project incorporate land from a public park, recreation area or wildlife refuge open to the public?

No

F. Are there any recreational trails or paths within the limits of the proposed project or State Highway right-of-way?

No

G. Will the proposed project impact any structures, buildings, rail lines or bridges within State Highway right-of-way?

No

H. Will the proposed project impact access to any businesses or residences?

No

I. Will the proposed project impact any existing public utilities or public services?

No

J. Will the proposed project impact existing pedestrian facilities, such as sidewalks, crosswalks or overcrossings?

No

K. Will new lighting be constructed within or adjacent to State Highway right-of-way?

No

19. Will this project cause a substantial change in the significance of a historical resource (45 years or older), or cultural resource?

☐ YES ☒ NO

(If "YES", provide a description)

20. Is this project on an existing State Highway or street where the activity involves removal of a scenic resource including a significant tree or stand of trees, a rock outcropping or a historic building? ☐ YES ☒ NO (If "YES", provide a description)

21. Is work being done on the applicant's property?

☐ YES

☒ NO

(If "YES", attach 6 complete sets of site and grading plans.)

22. Will the proposed project require the disturbance of soil?

☐ YES

☒ NO

If "YES", estimate the area within State Highway right-of-way in square feet AND acres: _____ (ft²) AND _____ (acres)

estimate the area outside of State Highway right-of-way in square feet AND acres: _____ (ft²) AND _____ (acres)

23. Will the proposed project require dewatering?

☐ YES

☒ NO

If "YES", estimate total gallons AND gallons/month. _____ (gallons) AND _____ (gallons/month)

SOURCE*: ☐ STORM WATER ☐ NON-STORM WATER

(*See Caltrans SWMP for definitions of non-storm water discharge: <http://www.dot.ca.gov/hq/env/stormwater/index.htm>)

24. How will any storm water or ground water be disposed of from within or near the limits of the proposed project?

☐ Storm Drain System

☐ Combined Sewer / Storm System

☐ Storm Water Retention Basin

☐ Other (explain): N/A

Browning, Dennis A@DOT

From: Pascal, Anthony C@DOT
Sent: Tuesday, April 11, 2017 1:02 PM
To: Browning, Dennis A@DOT
Subject: FW: Please Review_Ready for Submittal - Inyo Networks Survey/Engineering/Environmental Application_CalTrans Dist 2
Attachments: Survey App - D299_Inyo Networks_E.P._Application_(TR-0100).pdf; D299-Project-PFSA_2016-10-26.pdf

From: Oscar Mejia [mailto:omejia@inyonetworks.com]
Sent: Tuesday, April 11, 2017 12:53 PM
To: Pascal, Anthony C@DOT <anthony.pascal@dot.ca.gov>
Subject: Please Review_Ready for Submittal - Inyo Networks Survey/Engineering/Environmental Application_CalTrans Dist 2

Good afternoon Tony,

Thank you for your assistance yesterday, it was great meeting you over the phone.

I will be delivering the application soon to the District 2 address mentioned in Appendix G. I would like to confirm the application fee with you prior to issuing a check of \$164.

Please review the application and project maps and let me know if I need to add or change anything.

Your assistance is greatly appreciated.

Thank you,

Oscar Mejia
Outside Plant Engineer
Inyo Networks
10630 Town Center Dr., Ste. 117
Rancho Cucamonga, CA 91730
Mobile: 909-753-9512
Office: 909-457-8436
www.inyonetworks.com



EXHIBIT 3

2019 EMAIL RELATED TO NOAA CONCERNS ABOUT SEDIMENT

From: [Nicole Dunlap](#)
To: [Genevieve Boykins](#)
Cc: [Ben Lardiere](#)
Subject: FW: Comments for the Digital 299 Project
Date: Friday, July 26, 2019 11:29:25 AM

For our records.

From: Roman Pittman - NOAA Federal <roman.pittman@noaa.gov>
Sent: Friday, July 26, 2019 10:59 AM
To: Nicole Dunlap <ndunlap@transcon.com>
Cc: Jeffrey Jahn - NOAA Federal <jeffrey.jahn@noaa.gov>; Naseem Alston - NOAA Federal <naseem.alston@noaa.gov>
Subject: Comments for the Digital 299 Project

The work area for the proposed Digital 299 Project (Highway 299 from Humboldt Bay to Cottonwood, CA) contains multiple listed species. Our concerns regarding possible impacts include the potential to mobilize fine sediment into designated critical habitat during construction activities, particularly at stream crossings. If you expect any adverse affects to listed fish or their habitat then consultation with NMFS will be necessary to reduce these affects. A detailed description of construction methods will be helpful for us in assessing any potential impacts.

--

Roman Pittman
(707) 825-5167
NMFS Arcata, CA



EXHIBIT 4

EPIC COMMENTS ON DIGITAL 299 SCOPE



Keeping Northwest California wild since 1977

August 13, 2019

Andrew Barnsdale
Senior Analyst
Energy Division, Infrastructure Permitting and CEQA
505 Van Ness Avenue
San Francisco, CA 94102-3298
C/O ndunlap@transcon.com

Sent via email to address above

RE: Digital 299 Broadband Project Scoping

To Whom It May Concern:

Please accept these scoping comments for the Digital 299 Broadband Project (project) on behalf of EPIC-Environmental Protection Information Center. Our 20,000 members and supporters deeply value the forests, wildlife and watersheds of Northern California and the Six Rivers and Shasta-Trinity National Forests. EPIC has a keen interest in conditions throughout the bioregion. EPIC is committed to the long-term protection and restoration of our globally significant, native species, rivers and the complex and diverse ecosystems in the North Coast regions of the Pacific Northwest.

The project proposes to install 280 miles of fiber optic cable from Eureka to Cottonwood, CA. While the proposed alignment generally follows SR-299, it is sited mostly along the shoulders and of County and USFS roads.

Scope, Purpose and Need

The broad scope of the project contains relative environmental uncertainty in regards to significant effects and extraordinary circumstances which requires the development of an Environmental Impact Statement. It is stated that purpose and need for the project is to provide rural connectivity and redundancy across the region, improve safety for travelers and first responders and to stimulate economic development. Please include detailed information on how the project would fulfill the purpose and need.

National Forest Land Allocations

The EIS should disclose where and what land allocations and management areas on both national forest so that the public and stakeholders can provide the most informed comments.

Wild and Scenic Rivers

Please disclose what stretches of the project would impact the Wild and Scenic river corridors and how the project may affect the designated characteristics.

Fish and Wildlife

The EIS must analyze and disclose impacts to all Threatened and Endangered species in the project area and also to USFS Sensitive, Management Indicator Species and Survey and Manage Species. Please provide adequate information on the location, habitat and presence these species and detail the Project Design Features and Limited Operating Periods that would be included.

Water Quality

The EIS must disclose all legacy sediment sites in the project area and subsequent treatments in order to comply with the Water Quality requirements and waivers.

Invasive Plants

The forthcoming NEPA/CEQA planning document should disclose and analyze the current status of invasive plants in the project area and provide mitigations so as to not spread these highly undesirable species.

Connected Actions and Cumulative Effects

The scoping notice states that the project will include future cell phone towers but the planning will not address this connected action. However NEPA requires that all foreseeable connected actions be analyzed in the planning document. Please detail the environmental and visual impacts of this associated connected action.

Thank you for considering our comments and concerns. Please send a hard copy of the forthcoming NEPA/CEQA to the Arcata EPIC office.

Sincerely,

A handwritten signature in black ink, appearing to read "Kimberly Bahn". The signature is fluid and cursive, with a long horizontal stroke at the end.

Environmental Protection Information Center
Public Land Advocate
145 G. St., Suite A
Arcata, CA 95521
707-822-7711
Kimberly@wildcalifornia.org

SB 960 Compliance – Scoping Memorandum Information [Rule 2.1(c)]

In accordance with the Rule 2.1(c), Velocity provides the following information:

1. Proposed Category: This Application should be categorized as adjudicatory because it is requesting an appellate review of a Commission Decision. Thus, the proceeding should be concluded within 12 months.

2. Need for hearing: The matters in this Application for Rehearing, raise legal and factual errors for which there is no record evidence. Thus, a hearing, or examination in a rulemaking with a full opportunity for development of a factual record is required. At the minimum, Velocity is requesting oral argument because several holdings in Resolution T-17766 violate Commission procedural requirements and the CEQA statute.

3. Issues to be considered: Whether the Commission’s conclusions in Resolution T-17766 violate Commission procedural requirements and CEQA statute.

4. Proposed Schedule: Cal.net proposes the following schedule:

Application filed:	1/17/2023
Velocity files Motion for Stay:	TBD
Responses due:	30 days after the date of filing for this Application for Rehearing
Final Decision Adopted:	90 days after submission

APPENDIX A
(PROPOSED EDITS IN STRIKETHROUGH FONT; ADDITIONS IN BOLD)

FINDINGS

1. The Commission approved a California Advanced Services Fund (CASF) infrastructure grant application for Inyo Networks, Inc. (Inyo) on March 23, 2017, in Resolution T-17548. On September 17, 2020, Inyo Networks sent a letter to Communications Division terminating the grant that was approved in Resolution T-17548.
2. Vero Fiber Networks sent a letter to the Communications Division director on September 6, 2021, stating that: Vero intended to complete the Digital 299 project without CASF infrastructure funding, and to deliver public benefits that were identified as part of the Inyo CASF project. **Vero was allowed to continue with the informal staff resolution process commenced for Inyo despite the removal of the CASF award from the project.**
3. **The Digital 299 project does not meet CEQA statutory or categorical exemptions.**
4. The Commission conducted an initial review and determined that a Mitigated Negative Declaration (MND) was the appropriate CEQA review document. **Because Digital 299 was a CASF project, the Commission's Energy Division staff conducted the CEQA review through an informal process.**
5. **Vero's Certificate of Public Convenience and Necessity (CPCN) authorized it to use the informal staff CEQA review process only for projects that meet CEQA statutory or categorical exemptions.**
6. **Once Vero assumed the Digital 299 project, it should have used the Commission's standard process and filed a formal application for review of the project which no longer had a CASF component.**
7. As the lead agency under the California Environmental Quality Act, the Commission prepared an Environmental Assessment and Initial Study Mitigated Negative Declaration (IS/MND) for the Digital 299 Broadband Project.
8. The Commission finds that the Final IS/MND **does not** comply with the requirements of the California Environmental Quality Act **because Vero's Environmental Assessment (the equivalent of an Environmental Impact Report) was out of date and did not reflect the current situation in the project service area, including taking into account environmental changes from catastrophic wildfires in 2020 and 2021.**
9. **The Final IS/MND does not comply with CEQA because it did not analyze project alternatives, including "no project."**
10. **The Final IS/MND does not comply with CEQA because it inadvertently authorized Vero to piecemeal the Digital 299 project. At least two additional**

types of construction are planned by Vero – cellular towers and replacement of utility poles, but Vero did not provide any construction details or prepare an environmental study for these subsequent project components.

11. The Commission finds that the Final IS/MND **should be withdrawn and Vero should be directed to submit updated and/or additional environmental studies that account for local conditions that have changed since Inyo's initial environmental reports, analyzes project alternatives including "no project", and prohibits Vero from proceeding with Digital 299 until it has conducted and submitted environmental studies for the construction of cell towers and utility pole replacements.** ~~represents the Commission's independent judgement and analysis on the issues addressed by the IS/MND.~~
12. The Commission finds that the Final MND is **not** adequate for the Commission's decision-making purposes.
13. **Until Vero submits updated environmental studies, it is not possible to determine whether the proposed project will have no significant effects on the environment with the incorporation of the mitigation measures and applicant-proposed resource protection measures identified and listed in the MMRP.** ~~The Commission finds that Mitigation Measure BIO-3 fully mitigates any project-related impact to Less than Significant.~~
14. Commission staff **is not** ~~should be~~ authorized to issue a notice to proceed for the project. ~~that ensures Vero Fiber Networks, Inc. implements the measures contained in the MMRP as conditions of project approval and has adopted a system to document and verify MMRP implementation.~~
15. Resolution T-17766 was emailed to the CASF distribution list on November 10, 2022, in compliance with Pub. Util. Code section 311(g)(1).

THEREFORE, IT IS ORDERED that:

1. **Vero shall update its environmental studies to account for local conditions that have changed since Inyo's initial environmental reports, analyzes project alternatives including "no project", and prepare new environmental studies for the construction of cell towers and utility pole replacements.**
2. **Upon completion of the updated and new environmental studies, Vero shall file a formal application for review of its proposed Digital 299 project.**
3. **If, after a full review of Vero's updated and new environmental studies, the Commission prepares a revised IS/MND consistent with CEQA, Vero Fiber Networks shall comply with all guidelines, requirements, and conditions set forth in this resolution.**

4. The Final Mitigated Negative Declaration for the Project is **not** adequate for the Commission's decision-making purposes and is hereby **withdrawn** ~~adopted pursuant to the California Environmental Quality Act Guidelines and the Public Resources Code.~~
5. **When a revised IS/MND is issued**, Vero shall comply with all terms and conditions identified in the Mitigation Monitoring Compliance and Reporting Program (MMCRP) adopted as part of the Final IS/MND (See Appendix C).
6. Commission staff is **not** authorized to issue Vero Fiber Networks a notice to proceed (NTP) for the Digital 299 project **at this time**. ~~that memorializes the public benefit commitments contained in this Resolution; and requires compliance with the mitigation measures and the applicant proposed resource protection measures contained in the Final IS/MND.~~